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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE AND
FIRE DEPARTMENT RETIREMENT
PLAN OF CITY OF SAN JOSE, and DOES
1-10, inclusive, .

Defendants

) Lead Consolidated Case
) No. 1-12-CV-225926
)

) **PLAINTIFFS/PETITIONERS SAN JOSE**
) **RETIRED EMPLOYEES**
) **ASSOCIATION, HOWARD E.**
) **FLEMING, DONALD S. MACRAE,**
) **FRANCES J. OLSON, GARY J.**
) **RICHERT, AND ROSALINDA**
) **NAVARRO'S MOTION FOR AN**
) **ORDER TO CONSOLIDATE AND**
) **SEVER/CONTINUE**
)

) Date: April 19, 2013
) Time: 9:00 a.m.
) Dept.: 2
)

) Trial Date in Consolidated Actions:
) June 17, 2013

1 ROBERT SAPIEN, MARY KATHLEEN
2 McCARTHY, THANH HO, RANDY
3 SEKANY and KEN HEREDIA

4 Plaintiffs and Petitioners,

5 vs.

6 CITY OF SAN JOSE, DEBRA FIGONE, in
7 her official capacity as City Manager of the
8 CITY OF SAN JOSE, and Does 1 through
9 15,

10 Defendants and Respondents.

11 THE BOARD OF ADMINISTRATION
12 FOR THE 1961 SAN JOSE POLICE AND
13 FIRE DEPARTMENT RETIREMENT
14 PLAN,

15 Necessary Party in Interest

16 TERESA HARRIS, JON REGER and
17 MOSES SERRANO,

18 Plaintiffs and Petitioners,

19 vs.

20 CITY OF SAN JOSE, DEBRA FIGONE, in
21 her official capacity as City Manager of the
22 CITY OF SAN JOSE, and Does 1 through
23 15,

24 Defendants and Respondents.

25 THE BOARD OF ADMINISTRATION
26 FOR THE 1975 FEDERATED CITY
27 EMPLOYEES' RETIREMENT PLAN,

28 Necessary Party in Interest.

) Consolidated Case No. 1-12-CV-225928

) Consolidated Case No. 1-12-CV-226570

JOHN MUKHAR, DALE DAPP, JAMES
ATKINS, WILLIAM BUFFINGTON and
KIRK PENNINGTON,

Plaintiffs and Petitioners,

CITY OF SAN JOSE, DEBRA FIGONE, in
her official capacity as City Manager of the
CITY OF SAN JOSE, and Does 1 through
15, .

THE BOARD OF ADMINISTRATION
FOR THE 1975 FEDERATED CITY
EMPLOYEES' RETIREMENT PLAN,

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL
EMPLOYEES, LOCAL 101, on behalf of its
members,

Plaintiff and Petitioner,

CITY OF SAN JOSE and DEBRA FIGONE.
In her official capacity as City Manager,

THE BOARD OF ADMINISTRATION
FOR THE FEDERATED CITY
EMPLOYEES RETIREMENT PLAN,

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1 **I. INTRODUCTION AND STATEMENT OF FACTS**

2 On October 5, 2012, Plaintiffs/Petitioners San Jose Retired Employees Association
3 ("SJREA") and retired members of the Federated City Employees Retirement System, Howard
4 E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro
5 ("SJREA Retirees") (collectively " SJREA Plaintiffs") filed this lawsuit, Case No. 1-12-CV-
6 233660 (the "SJREA Action"), seeking to invalidate certain provisions of "The Sustainable
7 Retirement Benefits and Compensation Act" ("Measure B") passed by the electors of the City
8 of San Jose (the "City") on June 5, 2012. (Declaration of Stephen H. Silver "Silver Decl." ¶ 3.)
9 Prior to the filing of the SJREA Action, actions were filed by San Jose Police Officers'
10 Association ("SJPOA") (Case No. 1-12-CV-225926, filed June 6, 2012, the "SJPOA Action"),
11 Sapien, et al., (Case No. 1-12-CV-225928, filed June 6, 2012, the "Sapien Action"), Harris, et
12 al. (Case No. 1-12-CV-226570, filed June 15, 2012, the "Harris Action") Mukhar, et al., (Case
13 No. 1-12-CV-226574, filed June 15, 2012, the "Mukhar Action") and American Federation of
14 State, County, and Municipal Employees, Local 101 ("AFSCME") (Case No. 112CV227864,
15 filed July 5, 2012 the "AFSCME Action") challenging various provisions of Measure B.
16 (Silver Decl. ¶ 4.) On August 23, 2012, the Court ordered consolidation of the SJPOA Action,
17 Sapien Action, Harris Action, Mukhar Action and AFSCME Action (collectively
18 "Consolidated Actions", the plaintiffs of which shall be referred to collectively as
19 "Consolidated Plaintiffs") for pre-trial purposes. (Silver Decl. ¶ 5.)

20 Many, though not all, of the challenges contained in the SJREA Action and the
21 Consolidated Actions are based on contentions that the enactment of Measure B impairs vested
22 contractual rights in violation of Article I, Section 9 of the California Constitution. In contrast
23 with the SJREA Action, neither the SJPOA Action nor the AFSCME Action was brought on
24 behalf of individuals who had retired prior to the enactment of Measure B. The Sapien Action,
25 Harris Action and Mukhar Action each contains at least one representative plaintiff who had
26 retired prior to the enactment of Measure B, though issues related to those persons are not the
27 central focus of those Actions.

1 On November 16, 2012, the SJREA Plaintiffs filed a Notice of Related Cases
2 establishing that the SJREA Action was related to the Consolidated Actions. (Silver Decl. ¶ 6.)
3 No objection to the Notice of Related Cases was filed. Defendant City of San Jose (the "City")
4 filed a Demurrer in the SJREA Action, which was overruled by the Court on February 19,
5 2013. (Silver Decl. ¶ 7.) On April 2, 2013, the City filed its answer in the SJREA Action.
6 (Silver Decl. ¶ 8.)

7 Trial in the Consolidated Actions is set for June 17, 2013 before Judge Lucas in
8 Department 2. (Silver Decl. ¶ 9.) It is the understanding of the SJREA Plaintiffs that the
9 precise issues which will be tried on June 17, 2013 in the Consolidated Actions are still being
10 negotiated between the parties in the Consolidated Actions because, though there are several
11 common issues in the component actions, there are also issues that are distinct and which may
12 not require a joint hearing. (Silver Decl. ¶ 9.) In addition, a hearing on the City's pending
13 Motion for Summary Adjudication in the Consolidations Actions only has been set for May 3,
14 2013. Two Pre-Trial Conference dates have been set in the Consolidated Actions (on April 19,
15 2013 and May 10, 2013), at which the scope of trial may be determined. (Silver Decl. ¶ 9.) No
16 trial date has been set in the SJREA Action and the Court has not issued any ruling as to which
17 Judge will try the SJREA Action. (Silver Decl. ¶ 10.)

18 The SJREA Plaintiffs request that the Court grant the instant Motion to Consolidate the
19 SJREA Action with the Consolidated Actions as there are common issues of fact and law. If
20 the SJREA Action is not consolidated with the Consolidated Actions, and the actions are heard
21 by the same Judge, it will have a practical, if not legal effect, of binding the SJREA Plaintiffs to
22 rulings made where they had no opportunity to be heard. If the SJREA Action is not
23 consolidated with the Consolidated Actions, and the actions are tried by different judges, there
24 is a risk of inconsistent rulings on the same issues of fact and law. Therefore, it is in the
25 interests of justice and preservation of judicial resources that the SJREA Action be
26 consolidated with the Consolidated Actions.

27 Additionally, upon ordering consolidation, the SJREA Plaintiffs respectfully request
28 that this Court sever from the trial and the City's pending Motion for Summary Adjudication

1 certain issues that are distinct to retirees. Severance in this manner will have the positive
2 effect, *inter alia*, of allowing the SJREA Plaintiffs a fair amount of time to prepare for the
3 issues that are distinct to retirees, while also permitting the Consolidated Actions to go forward
4 without delay on the issues where retirees are in the same position as active employees.

5 As a secondary alternative to severance, the SJREA Plaintiffs respectfully request that,
6 upon ordering consolidation of the SJREA Action with the Consolidated Actions, this Court
7 continue the trial date and all related pre-trial deadlines and appearance dates for a period of
8 approximately four months. Without severance, the requested continuance is necessary due to
9 the fact that the SJREA Action was filed approximately four months after the Consolidated
10 Actions and the City has only just served the SJREA Plaintiffs with an Answer to the Verified
11 Complaint on April 2, 2013. The SJREA Plaintiffs would be severely prejudiced if they are
12 required to try their claims within the time frames previously established in the Consolidated
13 Actions.

14 **II. RELEVANT AUTHORITY REGARDING CONSOLIDATION AND**
15 **SEVERANCE**

16 Code of Civil Procedure Section 1048 governs Motions to Consolidation and
17 Severance. It states:

18 (a) When actions involving a common question of law or fact are pending
19 before the court, it may order a joint hearing or trial of any or all the matters in
20 issue in the actions; it may order all the actions consolidated and it may make
21 such orders concerning proceedings therein as may tend to avoid unnecessary
costs or delay.

22 (b) The court, in furtherance of convenience or to avoid prejudice, or when
23 separate trials will be conducive to expedition and economy, may order a
24 separate trial of any cause of action, including a cause of action asserted in a
25 cross-complaint, or of any separate issue or of any number of causes of action or
issues, preserving the right of trial by jury required by the Constitution or a
statute of this state or of the United States.

26 “It is well-established that consolidation of cases rests within the sound discretion of the
27 trial judge. (*Walker v. Walker* (1960) 177 Cal.App.2d 89, 91-92, citing *Fisher v. Nash Bldg.*
28 *Co.* (1952) 113 Cal.App.2d 397, 402; *Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.

1 Consolidation is permissive, and the trial court granting consolidation must determine whether
2 the consolidation will be for all purposes or will be limited. (*Committee for Responsible*
3 *Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 196 fn. 5, citing *General Motors*
4 *Corp. v. Superior Court* (1966) 65 Cal.2d 88, 92.) The purpose of consolidation is to promote
5 efficiency by avoiding unnecessary duplication of proceedings (*Mueller v. J.C. Penny Co.*
6 (1985) 173 Cal.App.3d 713, 722) as well as to avoid inconsistent resolution of the same legal
7 or factual issues. (*Garden Grove Community Church v. Pittsburgh-Des Moines Steel Co.*
8 (1983) 140 Cal.App.3d 251, 262.) A consolidation of actions does not affect the rights of the
9 parties. The purpose of consolidation is merely to promote trial convenience and economy by
10 avoiding duplication of procedure, particularly in the proof of issues common to both actions.
11 (*Estate of Baker* (1982) 131 Cal.App.3d 471, 485; *Wouldridge v. Burns* (1968) 265 Cal.App.2d
12 82, 86.) In determining whether consolidation will further efficiency, the Court may consider
13 whether: 1) common issues of law or fact predominate over individual issues; 2) a party will be
14 burdened by being required to participate in extensive proceedings unrelated to its claims or
15 defenses; 3) the duration and cost of a single, consolidated proceeding will be less than the
16 duration and cost of multiple proceedings; and 4) inconsistent results are likely if consolidation
17 is denied. (Civil Procedure Before Trial, CEB 4th Ed. Section 43.33 p. 2073-2074.)

18
19 Code of Civil Procedure Section 1048 authorizes a separation of issues whenever it can
20 be done without prejudice to a substantial right. (*Bratton & Moretti v. Finerman & Son* (1959)
21 171 Cal.App.2d 430, 435.) In addition, Code of Civil Procedure Section 598 authorizes the
22 Court to sever issues in a case as follows:

23 “The court may, when the convenience of witnesses, the ends of justice, or the
24 economy and efficiency of handling the litigation would be promoted thereby,
25 on motion of a party, after notice and hearing, make an order, no later than the
26 close of pretrial conference in cases in which a pretrial conference is to be held,
27 or, in other cases, no later than 30 days before the trial date, that the trial of any
28 issue or any part thereof shall precede the trial of any other issue or any part
thereof in the case, except for special defenses which may be tried first pursuant
to Sections 597 and 597.5.”

1 Factors considered by the Court in a request for severance include: promotion of
2 efficiency of private and judicial resources (*Bedolla v. Logan & Frazer* (1975) 52 Cal.App.3d
3 118, 135), avoidance of undue prejudice (*Stencel Aero Engineering v. Superior Court* (1976)
4 56 Cal.App.3d 978, 988) and the interests of justice (*Roylance v. Doelger* (1962) 57 Cal.2d
5 255, 262.)

6 **III. THERE ARE MANY COMMON QUESTIONS OF LAW AND FACT**
7 **BETWEEN THE SJREA ACTION AND THE CONSOLIDATED ACTIONS**
8 **WHICH SHOULD BE TRIED JOINTLY.**

9 The following issues are common to the SJREA Action and at least one of the other
10 Consolidated Actions. Therefore, consolidation and joint trial on these issues would promote
11 efficiency by avoiding unnecessary duplication of proceedings and would guard against the
12 possibility of inconsistent rulings. As to these matters, the SJREA Plaintiffs request that these
13 issues be tried jointly with the Consolidated Actions, except as detailed below with respect to
14 the “reservation of rights” issue.

15
16 A. Entitlement to Medical and Dental Insurance Coverage

17 The SJREA Plaintiffs contend that the retirees they represent have vested rights to
18 participation in the City’s Medical Plan as forth in the San Jose Municipal Code, Chapter 3.24,
19 Part 23 and Chapter 3.28, Part 16, and the City’s Dental Plan, as set forth in the San Jose
20 Municipal Code, Chapter 3.24, Part 24 and SJMC Chapter 3.28, Part 17. The SJREA Plaintiffs
21 further contend that Section 1512-A of Measure B, entitled “Retiree Healthcare” impairs
22 retirees’ rights to health and dental insurance coverage from the City’s Medical and Dental
23 Plans by re-characterizing what were vested contractual rights, *i.e.*, the entitlement to medical
24 insurance coverage from the City’s Medical and Dental Plans, as non-vested rights. Similarly,
25 the Complaints in the Consolidated Actions allege that the affected individuals therein have
26 vested rights to retiree healthcare and that Measure B impairs those vested rights.

27 B. Entitlement to Cost of Living Adjustments

28 The SJREA Plaintiffs contend that their represented retirees have earned vested rights to

1 cost-of-living adjustments (“COLAs”) pursuant to Chapter 3.44 of the San Jose Municipal
2 Code. The SJREA Plaintiffs further contend that Section 1510-A of Measure B, entitled
3 “Emergency Measures to Contain Retiree Cost of Living Adjustments,” adds a contingency
4 whereby the City can suspend COLAs upon its declaration of fiscal emergency, where no such
5 contingency previously existed, and in so doing, impairs the vested rights of the represented
6 retirees. Consolidated Plaintiffs also challenge Section 1510-A of Measure on the same
7 grounds.

8 C. Entitlement to Discretionary Distributions from the City’s Supplemental Retiree
9 Benefit Reserve (“SRBR”)

10 The SJREA Plaintiffs allege their represented retirees have earned a vested right to
11 discretionary distributions from the SRBR as set forth in the San Jose Municipal Code,
12 Chapters 3.28.200, et seq. and particularly Section 3.28.340. They contend that Section 1511-
13 A of Measure B, entitled “Supplemental Payments to Retirees,” impairs the represented
14 retirees’ vested rights as that section discontinues the SRBR and provides no authority for
15 similar supplemental payments to be made to retirees. Consolidated Plaintiffs contend that
16 Section 1511-A of Measure B similarly impairs vested rights with respect to the applicable
17 SRBR.

18 D. Violation of the Pension Protection Act

19 The SJREA Plaintiffs allege that Section 1513-A of Measure B, entitled “Actuarial
20 Soundness (for both pension and retiree healthcare plans)” violates Article XVI, Section 17 of
21 the California Constitution because it compromises the fiduciary responsibilities of the Board
22 of Administration for the Federated City Employees Retirement System (the “Board”) towards
23 retirees by compelling the Board to consider equally the City’s residents and taxpayers in
24 making determinations affecting the plan. This allegation was also made in the SJPOA Action.

25 E. Violation of the Separation of Powers

26 The SJREA Plaintiffs contend that Section 1515-A of Measure B, entitled
27 “Severability” gives the City Council powers which are reserved for the judiciary and therefore
28 violates the separation of powers between the legislative, executive, and judicial branches

1 under Article III, Section 3 of the California Constitution. This same contention is made in the
2 SJPOA Action.

3 F. Reservation of Rights

4 The City has taken the position in the Consolidated Actions (and presumably will take
5 the position in the SJREA Action) that Measure B does not impair vested contractual rights
6 because, pursuant to a “reservation of rights” clause contained in Article XV, Section 1500 of
7 the City Charter, it may decrease benefits to the members of the various retirement plans
8 established by the City. The SJREA Plaintiffs and Consolidated Plaintiffs all contend that the
9 reservation of rights clause does not apply to the enactment of Measure B, because, *inter alia*,
10 the reservation of rights clause has been historically interpreted to grant the City Council with
11 the ability to increase, not decrease, benefits to the members of the various retirement plans
12 established the City. The SJREA Plaintiffs contend that question of whether the “reservation of
13 rights” clause applies to the enactment of Measure B, generally, should not be severed from
14 trial in the Consolidated Actions.

15 However, the SJREA Plaintiffs and select retiree plaintiffs in the Sapien Action, Harris
16 Action, and Mukhar Action (“Retiree Plaintiffs”) have the following separate and distinct
17 secondary alternative argument as to why the reservation of rights clause does not apply to
18 retirees, even if the Court finds that it applies to active employees: Even if City Charter
19 Section 1500 generally applies to the enactment of Measure B, because Section 1500 only
20 empowers the City Council “at any time, or from time to time, amend or otherwise change any
21 retirement plan or plans or adopt or establish a new or different plan or plans for all or any
22 *officers or employees*”, this empowerment is limited to *officers or employees* and thus excludes
23 retired members.

24 Again, this secondary argument need not be advanced if the Court finds that the
25 “reservation of rights” clause does not apply to the reduction of benefits resulting from the
26 enactment of Measure B. As a result, the SJREA Plaintiffs strongly believe that this alternative
27 issue should be severed and decided at a later date. Doing so will also remove a potentially
28 difficult situation where the attorneys for the Retiree Plaintiffs in the Sapien Action, Harris

1 Action, and Mukhar Action might not present this fall-back argument (which is specific to
2 retirees) with the same zeal they would if they were not concerned about the potential adverse
3 effect this contrast between active members (i.e., officers and employees) and retirees might
4 have on their active member clients, who significantly outnumber their retiree clients.

5 **IV. IN ADDITION TO THE PORTION OF THE RESERVATION OF RIGHTS**
6 **ISSUE WHICH IS DISTINCT FOR RETIREES, THE ISSUES OF**
7 **PROMISSORY ESTOPPEL AND “CHARTERIZATION” IN THE SJREA**
8 **COMPLAINT, WHICH ARE NOT PRESENT IN ANY OF THE**
9 **CONSOLIDATED ACTIONS, SHOULD BE SEVERED AFTER**
10 **CONSOLIDATION.**

11 The following issues are distinct to the SJREA Action and not present in the
12 Consolidated Actions. As to these matters, the SJREA Plaintiffs request that they be tried
13 separately along with the issue of the application of the “reservation of rights” clause to
14 retirees,¹ after the common issues have been tried and decided.

15 A. Charterization

16 The SJREA Plaintiffs contend that Section 1504-A of Measure B, entitled “Reservation
17 of Voter Authority,” impairs the vested rights of SJREA members to distributions of additional
18 benefits to retirees at the sole discretion of the City Council. Section 1504-A of Measure B,
19 entitled “Reservation of Voter Authority” requires that City Council obtain voter approval
20 before allowing for such distributions.

21 B. Promissory Estoppel

22 The SJREA Plaintiffs contend that, when additional benefits were granted to active
23 employees over time, those benefits were promised by the City to individuals who already had
24 retired prior to the grant. SJREA Plaintiffs allege that these retired individuals relied on the
25 promises of the City to their detriment and, therefore, the City should be estopped from
26

27
28 ¹ As previously explained, this issue will only be necessary in the unlikely event that the Court decides in the trial
of the Consolidated Actions that this clause empowers the City to reduce earned retirement benefits without
impairment.

1 denying these benefits in the future. There are especially good reasons why this issue should
2 be severed after consolidation. First, in order for the affected retirees to prevail, the Court must
3 find that there was an impairment of vested rights to individuals who had not retired prior to
4 grant of the benefits in question. Second, a significant amount of individualized proof might
5 have to be offered by the SJREA Plaintiffs in order to prove that the affected retirees
6 detrimentally relied on the City promises.

7 **V. IN THE EVENT THE COURT DECLINES TO SEVER ACCORDING TO THE**
8 **SJREA PLAINTIFFS' REQUEST, GOOD CAUSE EXISTS TO GRANT A**
9 **CONTINUANCE OF TRIAL IN THE CONSOLIDATED ACTIONS UPON**
10 **CONSOLIDATION OF THE SJREA ACTION.**

11 As set forth above, there is good cause to consolidate the SJREA Action with the
12 Consolidated Actions as there are many common issues of fact and law. Further, if the above
13 request to sever is not granted, there also is good cause for the Court to continue the previously
14 established trial date of June 17, 2013.

15 California Rule of Court 3.1332(c) provides the grounds for continuance of trial. It
16 states in pertinent part:

17 “Although continuances of trials are disfavored, each request for a continuance
18 must be considered on its own merits. The court may grant a continuance only
19 on an affirmative showing of good cause requiring the continuance.
Circumstances that may indicate good cause include:

20 * * *

21 (5) The addition of a new party if:

22 (A) The new party has not had a reasonable opportunity to conduct
discovery and prepare for trial.

23 Upon consolidation, the SJREA Plaintiffs will be new parties in the Consolidated
24 Actions. The SJREA Action was filed on October 5, 2013 and, therefore, the SJREA Plaintiffs
25 have had less than nine months to prepare for trial on June 17, 2013. Further, the City only just
26 served its Answer to the SJREA Plaintiff's Verified Complaint on the late afternoon of April 2,
27 2013. As that Answer was so recently received, SJREA Plaintiffs cannot conclusively state
28

1 how much discovery will be required. (Silver Decl. ¶¶ 11-12.) [Of note, if the Court grants the
2 instant Motion to Consolidate and severs the requested issues from the Motion for Summary
3 Adjudication and trial, discovery on the severed issues can be forestalled until resolution of the
4 initial trial date.]

5 California Rule of Court 3.1332(d) provides for other factors to be considered in
6 determining whether to continue trial. It states in pertinent part:

7 “In ruling on a motion or application for continuance, the court must consider all
8 the facts and circumstances that are relevant to the determination. These may
9 include:

- 10 (1) The proximity of the trial date;
11 (2) Whether there was any previous continuance, extension of time, or
12 delay of trial due to any party;
13 (3) The length of the continuance requested;
14 (4) The availability of alternative means to address the problem that
15 gave rise to the motion or application for a continuance;
16 (5) The prejudice that parties or witnesses will suffer as a result of the
17 continuance;

18 * * *

- 19 (7) The court’s calendar and the impact of granting a continuance on
20 other pending trials;

21 * * *

- 22 (9) Whether all parties have stipulated to a continuance;
23 (10) Whether the interests of justice are best served by a continuance, by
24 a trial of the matter, or by imposing conditions on the continuance; and
25 (11) Any other fact or circumstance relevant to the fair determination of
26 the motion or application.”

27 Addressing the factors above by the parenthetical numbers set forth in California Rule
28 of Court 3.1332(d): (1) the June 17, 2013 trial was set without the SJREA Plaintiffs present;
(2) there have been no previous continuances of trial; (3) the SJREA Plaintiffs request a
continuance of 4 months, such that trial is heard in October 2013, which will give the SJREA
Plaintiffs approximately the same one year period to prepare as the parties in the Consolidated
Actions would have had given the June 17, 2013 trial date; (4) while the SJREA Plaintiffs have
herein articulated an alternative solution (severing issues relating solely to retirees), the City

1 will not voluntarily agree to that solution; (5) no parties will be substantially prejudiced by the
2 requested continuance [It is the SJREA Plaintiffs' understanding that the City has proposed a
3 Stipulation with Consolidated Plaintiffs that it will stay enforcement of nearly every provision
4 of Measure B at least until after January 1, 2014] (Silver Decl. ¶ 13); (7) SJREA Plaintiffs
5 defer to the Court regarding its calendar; (9) while the parties have not stipulated to the
6 requested continuance, prior to the filing of the instant application, SJREA Plaintiffs have
7 exhaustively attempted to reach a solution that would accommodate all parties in the
8 Consolidated Actions (Silver Decl. ¶¶ 14-18); (10) as set forth above, without the requested
9 continuance, the SJREA Plaintiffs will be disadvantaged in that they will not be able to
10 adequately prepare for trial; and, (11) the City cannot argue that it is prejudiced by the
11 continuance of trial where it only answered the SJREA Plaintiffs' Verified Complaint on April
12 2, 2013. (Silver Decl. ¶ 8.)

13
14 Finally, it must be emphasized that the subject lawsuits affect a significant number of
15 people. It is important that the parties and the Court are given the opportunity to fairly and
16 adequately consider all of the various arguments set forth in these actions. Therefore, if the
17 Court does not grant severance as requested by the SJREA Plaintiffs, SJREA Plaintiffs request
18 a four month continuance of trial and related events, including the City's pending Motion for
19 Summary Adjudication, upon consolidation of the SJREA Action with the Consolidated
20 Actions.

21 **VI. CONCLUSION**

22 Based on the foregoing, it is respectfully requested that the SJREA Action be
23 consolidated with the Consolidated Actions and those issues specific to retirees set forth above
24 ("Charterization," Estoppel and application of the reservation of rights clause to retirees) be
25 tried separately. In the alternative, it is respectfully requested that the SJREA Action be

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1 consolidated with the Consolidated Actions and that a four month continuance of trial and
2 related events, including the City's pending Motion for Summary Adjudication, be granted.

3 Respectfully submitted,

4 SILVER, HADDEN, SILVER, WEXLER & LEVINE

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6 DATED: April 4, 2013

7 By: 

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